

TO: Files

CC: San Diego Audit Committee

FROM: Willkie Farr & Gallagher LLP

RE: Interview of Toni Atkins on April 28, 2006

DATED: May 24, 2006

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On Friday, April 28, 2006, Benito Romano and Michael Schachter, in Willkie Farr & Gallagher LLP's ("Willkie") capacity as counsel to the Audit Committee, interviewed Councilmember Toni Atkins. Ms. Atkins was represented by counsel, Sean Prosser and Kimberly Greer of Morrison & Foerster LLP. Also in attendance were Lynn Turner and Troy Dahlberg of the Audit Committee, William Haegele of KPMG, and Brian Faerstein of Willkie. The interview took place in a conference room on the third floor of the San Diego City Administration Building and lasted approximately five and one-half hours, not including a break for lunch.

The following memorandum reflects my thoughts, impressions, and opinions regarding our meeting with Toni Atkins, and constitutes protected attorney work product. It is not, nor is it intended to be, a substantially verbatim record of the interview.

### ***Warnings***

Mr. Romano began the interview by explaining the circumstances and purpose of the City of San Diego's (the "City") creation of the Audit Committee, noting that information obtained during the course of the interview would be used, if relevant, in the Audit Committee's eventual report. Mr. Romano explained that Willkie does not represent Councilmember Atkins and, thus, statements made during the interview are not covered by the Councilmember's attorney-client privilege. Nonetheless, we would be treating the information obtained during the interview as confidential, covered by the work-product privilege during the investigation, but any such privilege would likely be lost with the release of the Audit Committee's report. Mr. Romano asked that Councilmember Atkins keep the interview confidential. Mr. Romano further explained that, if requested, we would provide information from the interview to the SEC, the U.S. Attorney's Office or the City's outside auditor, KPMG, so it is important that Councilmember Atkins be accurate and truthful. Mr. Romano emphasized that Councilmember Atkins should seek clarification of any question at any time.

Mr. Prosser asked whether Councilmember Atkins would be able to review the summary memorandum prepared after the interview. Councilmember Atkins noted that Vinson & Elkins ("V&E") had told her that she would be able to review the contents of an interview summary memorandum prepared by V&E after they had interviewed her in July 2004, but that she was never able to examine it. Mr. Romano explained that the Audit Committee would be

taking a different approach than V&E did, and that Councilmember Atkins would not be given the opportunity to examine the summary memorandum prepared by the Audit Committee.

### ***Background***

Councilmember Atkins received a Bachelor of Arts Degree in political science, with a focus on community organizing. After college, she worked as a community administrator at a San Diego women's clinic and then worked as a job counselor at San Diego Job Corps for one year. Councilmember Atkins began her employment with the City in December 1993, working as a Council Aide to Councilmember Christine Kehoe. Councilmember Atkins advised Councilmember Kehoe on a number of policy issues, served as a liaison to a number of community groups, and handled constituent complaints. Councilmember Atkins worked with seven other staff members -- each of whom represented a different community within District 3 - - and under Councilmember Kehoe's Chief of Staff. During her tenure with Councilmember Kehoe, Councilmember Atkins advised on a number of policy issues, including: education; economic development; housing; social services; and federal block grants. Councilmember Atkins did not handle pension issues while she worked for Councilmember Kehoe nor was she familiar with the concept of corridor funding at that time. She stated that she is still not familiar with the term "corridor funding." Asked when she first became familiar with MP1, Councilmember Atkins recalled that discussion of the proposal came up during labor negotiations at the end of 2001 or early 2002.

### ***Budget Process***

Mr. Romano asked Councilmember Atkins about the City's budget process. Councilmember Atkins stated that she was not certain as to the exact timing of the process. She believed that the City Manager's Office begins preparing a draft budget and supporting binders in the late fall each year so the documents can be bound and distributed to Council members in the first few months of the following year. The City Council begins discussing the draft budget in or around April and May, and the budget is finalized by the end of June. Councilmember Atkins explained that it is the City Manager's decision as to when labor negotiations begin with the unions, but that this process will generally coincide with budget discussions. Councilmember Atkins explained that there is also a target date in May for the completion of the salary and appropriations ordinances, which must be completed before the budget is finalized and the next fiscal year begins. If labor negotiations bring salary increases for City employees, these increases must be incorporated into the new budget.

Mr. Romano asked Councilmember Atkins whether the budget is a yearly budget or whether it incorporates projected costs beyond the upcoming year. Councilmember Atkins explained that the budget is prepared on a yearly basis and incorporates the terms of long-term contracts, such as a three-year labor agreement. Mr. Romano asked Councilmember Atkins how the budget is amended if insufficient funds are budgeted for any given year. Councilmember Atkins responded that the actual budget "book" is not amended; rather, the changes will be reflected in the next year's appropriations ordinance. Councilmember Atkins explained that the appropriations ordinance is supposed to "tie up" all the push-and-pull between budgeted funds for the previous year and "is probably one of the most important aspects" of the yearly budget process. She said the appropriations ordinance carries forward for the following year.

Mr. Romano asked Councilmember Atkins about how she delegates budget responsibilities within her staff. Councilmember Atkins explained that her Chief of Staff oversees the process and delegates budget items to staff members based on their particular policy area coverage duties. Councilmember Atkins noted this was the same way Councilmember Kehoe had approached budget issues. Mr. Turner later asked Councilmember Atkins what role she played on budget issues when she worked for Councilmember Kehoe. Councilmember Atkins explained that she reviewed the budgets for the Housing Commission, the Planning Department, Development Services and Health Services. She also examined the Federal block grants issued by the U.S. Department of Housing and Urban Development. She did not have any responsibility over pension budgeting issues and could not recall who did on Councilmember Kehoe's staff.

Mr. Romano inquired about how the budget is debated in Council, in particular whether there is a "big picture" context to the discussion or if the debates are focused on specific items. Councilmember Atkins explained that the City Manager would usually give a "primer" about the major debts and items before the proposed budget book came out for the following year. The budget was presented to City Council as a whole, not to a specific committee. Councilmember Atkins noted that City Manager Michael Uberuaga used to bring in one or two financial specialists in the City Manager's Office -- usually Lisa Irvine or Pat Frazier -- to help explain major issues in the upcoming budget. Mr. Romano asked Councilmember Atkins whether she would know where to find a pension deficit in the budget if one existed. Councilmember Atkins could not recall ever seeing a line-item in the budget showing a pension deficit, though the City's yearly contribution to the pension fund would be stated. Mr. Turner later asked Councilmember Atkins about her understanding of how much the City owed to the pension system through the budget process. Councilmember Atkins explained that, based on the information Council was given by the City Manager, she believed it was the City's obligation to make the payment represented by that particular line-item in the budget.

Mr. Turner later inquired as to whether Council is provided with budget comparisons -- *i.e.*, projected budget funding vs. actual expenditures -- on a month-to-month or year-to-year basis. Councilmember Atkins stated that Council still does not receive this type of information, though the City Auditor and Comptroller's Office has said that it is working to provide ongoing updates to Council. Asked whether the City Manager's Office provides long-term budget projections, Councilmember Atkins stated that Lamont Ewell (City Manager) conducted a five-year budget forecast, but that that was the first time such a study had been presented to Council. Ewell had explained to Council that rating agencies had asked for this type of information. However, Councilmember Atkins explained that she had not seen a document, nor could she recall a discussion, stating how long-term costs such as deferred maintenance or pension liability would be funded.

### ***Blue Ribbon Committee***

Mr. Romano asked Councilmember Atkins about her understanding of the Blue Ribbon Committee's (the "BRC") purpose and role, in particular whether she recalled Mayor Dick Murphy's reasons for creating it. Councilmember Atkins recalled that the BRC was created to examine the City's financial practices on a wide range of issues. Mr. Romano asked Councilmember Atkins whether she knew who was on the BRC at the time. She explained that

she did because Council had to vote to approve Mayor Murphy's appointments and, later on, the BRC made presentations to the Rules Committee in 2002 while she served on that Committee. Asked whether she knew BRC member Richard Vortmann, Councilmember Atkins stated that she recognized his name but that she did not know him at the time. Mr. Romano asked Councilmember Atkins whether she had any meetings with BRC members during its review. She stated that she could not recall having any such meetings, though she did meet with April Boling at some point (though she did not recall that Boling was on the BRC).

Mr. Romano asked Councilmember Atkins whether, at the outset, she had a sense as to how long it would take for the BRC to issue its report or report back to Council after the BRC was approved. Councilmember Atkins could not recall Mayor Murphy's timeframe. After pointing out that it took nearly one year for the BRC to issue its report, Mr. Romano inquired whether Councilmember Atkins could recall a sense of delay surrounding the BRC. Councilmember Atkins explained that she did not think the length of the investigation was atypical, as it was a major report and there were a lot of scheduling issues. Councilmember Atkins noted that Mayor Murphy had many other issues scheduled for the Rules Committee's review, so that could have possibly delayed the BRC's presentation to the Rules Committee. She could not recall whether anyone expressed concern about this delay.

Mr. Romano showed Councilmember Atkins the transcript from the February 27, 2002 Rules Committee meeting (Exhibit 1). Mr. Romano directed Councilmember Atkins's attention to page 35 of the February 27 Transcript, to Ed Ryan's (City Auditor and Comptroller) remark about the pension fund being "intentionally back-loaded." Councilmember Atkins could not recall this exact exchange, but she did remember Councilmember Byron Wear emphasizing the necessity of spending more time discussing the pension section of the BRC Report going forward. Mr. Romano asked whether the revelation that the pension fund was being intentionally under-funded up front was shocking to the Council members present at this meeting. Councilmember Atkins explained that she could not recall this discussion so she was not certain as to the Council members' or her own reaction.

Mr. Romano directed Councilmember Atkins's attention to page 41 of the February 27 Transcript, to the question she had asked about whether Mayor Murphy intended to do a "workshop" of the pension issue. Mr. Romano asked Councilmember Atkins what she meant by "workshop." She could not recall making this comment at the meeting as they covered so many items that seeing this discussion just appeared as a snapshot from some point in time. Councilmember Atkins added that it was not uncommon for the Mayor to hold workshops about particular issues if he believed the issue was complex and would take a lot of time to examine. She noted that the Mayor liked to keep things moving at these meetings so he would often refer complicated issues to outside groups to be studied and then presented to the Rules Committee or City Council. Mr. Prosser asked Councilmember Atkins whether the Mayor would have been the person to establish such a workshop, to which Councilmember Atkins responded affirmatively. She could not recall whether a workshop on the pension issue was ever held.

Mr. Romano showed Councilmember Atkins the transcript from the March 20, 2002 Rules Committee meeting (Exhibit 2). Mr. Romano directed Councilmember Atkins's attention to page 3 of the March 20 Transcript and Ueberuaga's reference to the five-page report he had prepared in response to the BRC presentation at the February 27, 2002 Rules Committee

meeting. Mr. Romano showed Councilmember Atkins a March 18, 2002 Manager's Report prepared for the March 20, 2002 Rules Committee meeting (Exhibit 3). Mr. Romano asked Councilmember Atkins whether she believed this was the report referenced by Uberuaga in the transcript. Councilmember Atkins recalled seeing the Manager's Report and believed it was likely the report at issue. Mr. Romano asked Councilmember Atkins if she recalled Uberuaga recommending that the pension issue be referred to the San Diego City Employees' Retirement System ("SDCERS") Board. Councilmember Atkins vaguely recalled discussion of the follow-up to the pension item but did not believe she recalled the discussion from that particular point in time. She recalled Uberuaga focusing his discussion on the so-called "six budget principles."

Mr. Romano directed Councilmember Atkins to pages 18 to 20 of the March 20 Transcript, in particular to Vortmann's comments urging speed in the review of the pension issue, Uberuaga's comments regarding the impact of this review on the Meet-and-Confer process, and Councilmember Atkins's comments on the SDCERS Board's responsibility for pension funding issues. Observing that the City is actually responsible for the funding of the pension fund, Mr. Romano asked Councilmember Atkins why it would have been appropriate to refer this funding issue to the SDCERS Board. Councilmember Atkins explained that she was still new to the Council and Rules Committee process at that point and may not have understood about how certain issues were related to certain governmental entities. She could not recall the context of her comments from this meeting. Mr. Romano asked Councilmember Atkins if she believed that the SDCERS Board was the responsible party to come up with a funding solution. Councilmember Atkins explained that she could not recall her understanding of this relationship at the time but that she relied to a great deal on the City Attorney's Office and the City Manager's Office for guidance on these issues. Mr. Romano asked Councilmember Atkins whether, in hindsight, she believed it made sense to refer this issue to the SDCERS Board. Councilmember Atkins explained that she has a very different perspective now of the process but that, at the time, she trusted the people that were advising Council on these types of issues.

Noting that the thrust of the BRC Report in terms of the retirement system issue was that the City was under-funding the pension fund, Mr. Romano asked Councilmember Atkins whether that revelation was at all alarming. Councilmember Atkins explained that this was not alarming because, even with Ryan's comments about the system being intentionally under-funded, the Council members were assured at the same time that this state of affairs was not extreme or extraordinary for a retirement system and that many other systems across the country were operated in a similar manner. She recalled getting the message from both Uberuaga and Ryan that they were not alarmed. Mr. Romano asked Councilmember Atkins to clarify who in particular reassured the City Council that the under-funding was not of great concern. Councilmember Atkins stated that Uberuaga, Ryan, Les Girard (Deputy City Attorney) and, to some degree, Bruce Herring (Deputy City Manager) served that role. She generally believed that if Ryan had great concerns, he would bring them to the City Council's attention. Mr. Romano asked Councilmember Atkins whether she recalled Vortmann being someone who raised concerns about the issue. Councilmember Atkins reiterated that Uberuaga's continual reassurance that the City was working toward a solution to the problem "drowned out" other potential alarm bells.

Mr. Turner listed the other financial concerns that were also raised in the BRC Report, including the declining tax base, deferred maintenance costs and overall budgeting

problems. Mr. Turner asked Councilmember Atkins why, taken as a whole along with the pension issue, this state of affairs was not alarming at the time. Noting that this was a good question in hindsight, Councilmember Atkins explained that it was often difficult to differentiate at the time between political posturing and real problems that needed immediate solutions. She noted that she was more concerned about the mounting deferred maintenance costs than the pension issue because of her involvement in infrastructure-related issues. Mr. Turner asked why the fact that the pension liability had doubled was not as alarming as deferred maintenance issues. Councilmember Atkins responded that while they were constantly reassured there was a long-term solution for the pension deficit, there was no such perception about deferred maintenance costs. She explained that so many other issues took attention away from the pension issue, in particular ones that seemed to be of more immediate consequence. She could not recall getting a sense of the long-term nature of the pension problem during the budget process.

Mr. Romano asked Councilmember Atkins whether she recalled informal conversations at the time that releasing a negative BRC Report would have undesirable consequences to the City. Councilmember Atkins could not recall any such discussion nor could she recall any conversations about the negative tone of the pension section of the Report. At this point, she again stressed that she was most concerned about the deferred maintenance issue. Asked whether she was aware of Vortmann's comments concerning the watered-down nature of the Report's findings, Councilmember Atkins said she only found out about his concerns later on.

Mr. Turner asked Councilmember Atkins whether she believed the City has established a plan to deal with the deferred maintenance costs. She stated that she does not believe the City has an adequate plan, particularly considering that recent reports have shown the estimated costs for deferred maintenance to be in the range of \$2.5 billion. She recalled that this estimate was made by several City department reports (led by Gail Goldberg of the Planning Department) during background analysis surrounding the proposed implementation of the "City of Villages" concept.

### ***Ballpark Offering and Disclosure Issues***

Mr. Romano showed Councilmember Atkins a November 6, 2001 memo from Girard to the Mayor and City Council with an attached letter from Bryan Cave discussing the due diligence duties of Council members in connection with the review of bond offering statements (Exhibit 4). Councilmember Atkins vaguely recalled receiving this letter at a closed-session Council meeting, though could not remember specific aspects of the letter. Mr. Prosser asked Councilmember Atkins to clarify as to what she recalled from this meeting. Councilmember Atkins explained that she remembered receiving the letter at the beginning of a closed-session meeting and that people were speaking to the Council members as they tried to read through the letter. She implied that it was difficult to read the letter because of this distraction. She believed that the letter was taken back from the Council members before they left the meeting (or that she did not take it with her).

Mr. Romano asked about what else was discussed at this meeting. Councilmember Atkins explained that closed-session meetings were generally held from nine

o'clock to ten o'clock on Tuesday mornings, before City Council's regular open-session meetings. There were many issues on the agenda for these closed-session meetings and they tried to get through as many as possible, so it was difficult for her to recall other issues discussed. They often rushed through many issues. With regard to this particular meeting, Councilmember Atkins recalled that Girard and an outside attorney both discussed the purpose of the Bryan Cave letter and that it came at a time when there were many pending lawsuits surrounding the construction of the proposed Padres' Ballpark stadium. She recalled that Girard and the other lawyer warned the Council members to be careful about what they said during the open-session meetings at which the Ballpark project was to be discussed as their statements could lead to another litigation being filed. Mr. Romano asked Councilmember Atkins why it was important for the Council members to get a securities law background at that point in time. She could not recall the specific reason for the securities law tutorial, but she explained that her belief was that they were receiving the information because of all the other litigations surrounding the Ballpark project. Councilmember Atkins did not know who had asked Girard and the outside attorney to speak to them and, before she could offer conjecture regarding whom could have been responsible, Mr. Prosser told Councilmember Atkins not to speculate.

Pointing out that the Bryan Cave letter was dated October 29, 2001, while the presentation of the letter in closed-session did not happen until November 6, 2001, Mr. Turner asked Councilmember Atkins whether any Council member asked why they were just receiving the letter on the day of the meeting. She could not recall anyone making this inquiry. She noted that Council often received closed-session materials immediately before the meeting (usually on a Tuesday) instead of on the Friday before the meeting. Mr. Turner asked Councilmember Atkins whether she believed that she received the Bryan Cave letter with adequate time to give it reasonable thought and to raise questions and concerns during the closed-session meeting. She could not recall having concerns at the time -- given that it was rather typical to receive materials at the closed-session meeting -- but in retrospect she believed that she should have received it sooner. Mr. Prosser asked Councilmember Atkins if she received this letter and understood it as laying out the law regarding preliminary offering statements and the federal securities laws. Councilmember Atkins responded that she was not certain about her comprehension at the time except that she understood it related to the Ballpark project.

At this point, Mr. Romano directed her attention to specific language in the Bryan Cave letter. Mr. Romano read the language on page 2 which states, "it is critical that the City Council and the Board of Commissioners exercise all due care in reviewing and evaluating the information contained in the POS." Mr. Romano asked Councilmember Atkins whether, assuming she recalled reading this statement, this duty was a startling revelation to her or other Council members in attendance. Councilmember Atkins explained that she had never come across a document like this letter related to other agenda items, so she believed that her only recollection as to its importance was in relation to litigations surrounding the Ballpark. Mr. Romano directed her attention to the paragraphs on page 3 of the letter that discuss the shortcomings of the disclosure review conducted by the Board of Supervisors in Orange County, California. Councilmember Atkins could not recall any references to the Orange County matter during the closed-session meeting. Mr. Romano asked about her recollection of the principles embodied in the paragraph on page 3 beginning, "The message communicated by the statements of the SEC. . . ." Councilmember Atkins recalled that the outside bond counsel present at the meeting informed the Council members that they needed to be prepared to ask questions about

the bond offering disclosure documents. However, she also recalled that Girard told the Council members that they needed to be careful about the questions they did ask and that the focus of this discussion was about the questions they would ask in closed session about litigations.

Mr. Turner asked how such a letter was supposed to help keep the City out of potential litigation or aid with pending litigations. Councilmember Atkins pointed to the "Subject" line of the cover memo from Girard, which referenced a number of ongoing litigations as well as an "anticipated litigation matter" to be brought by Bruce Henderson. Councilmember Atkins simply believed that prevention of litigation was the focus of the closed-session meeting. Mr. Turner asked how the Council members were specifically advised to be careful in open-session meetings. Councilmember Atkins reiterated that all she could remember was the basic sentiment that they should be careful about the questions they asked to avoid potential litigation. Mr. Haegele inquired further as to how questions could lead to litigation. Councilmember Atkins could not recall specifically. She noted that there was a great concern on the part of Mayor Murphy about the City issuing new bonds for the Ballpark and, that being the end goal, they needed to proceed with caution. However, she could not recall whether she or other Council members asked Girard or the other (outside) attorney about the nature of the prohibited questions.

Mr. Romano read the language in the top paragraph on page 4 which specifically lists the minimum duties of the Council members. Noting that the language reads like a recipe in a cook book, Mr. Romano asked Councilmember Atkins whether she recalled hearing any of these duties. After Mr. Prosser interjected with Councilmember Atkins's prior explanation that the Girard cover letter seems to limit the issue to pending litigation, Mr. Romano inquired about how she could not remember being advised of any of the letter's contents given its straightforward nature. Councilmember Atkins (apparently flustered) explained that she remembered the closed-session meeting but could only recall receiving this particular letter because of her general recollection of the Bryan Cave heading at the top.

Mr. Romano asked Councilmember Atkins whether she recalled anyone taking the Bryan Cave letter with them after the closed session meeting ended. She could not recall, but she noted that even though it was not a consistent practice for materials to be gathered up at the end of closed-session meetings, this collection process did happen on occasion for the purpose of precluding leaks. With regard to her specific practice, Councilmember Atkins said she usually left the materials behind though she has recently begun to take materials with her if not prohibited from doing so. On this particular occasion, she could not recall Girard telling Council members to leave the letter behind.

Mr. Turner asked whether, in retrospect, Girard's advice to Council members to exercise caution in asking questions regarding the Ballpark offering seemed contradictory with the language in the Bryan Cave letter explicitly describing Council members' duty to ask questions. Councilmember Atkins conceded that this was inconsistent advice. Mr. Turner asked her whether she believed Girard's advice was "misleading" and she acknowledged it could be considered as such.

Mr. Romano asked Councilmember Atkins about her recollection of receiving the actual Preliminary Official Statement ("POS") for the Ballpark offering. Councilmember Atkins

recalled that the POS was dropped off along with the document binders that Council members received the week before the Council meeting at which the POS was discussed. She remembered Girard dropping off the set of binders and explaining that the POS contained therein was for the meeting the following week. She clarified that he specifically told her, "be careful what questions you ask in open session." She explained that she took the POS home with her and read through the document. Mr. Turner asked Councilmember Atkins how she reviewed the POS. Councilmember Atkins explained that she read it but that she was not familiar with this type of document, noting that "it was a lot." She said that not everything in the document was filled in. Asked whether she spoke with anyone about whether there was anything she should be specifically looking for in the document, Councilmember Atkins said she was not given much guidance and did not come to understand that it was mostly boilerplate language until later on. She did not recall discussing the contents of the POS with anyone after reading it.

Mr. Romano asked Councilmember Atkins if she could recall what she was specifically looking for as she read the POS. Councilmember Atkins responded that she simply understood it to be a financial document related to the Mayor's intent to refinance the bonds at a lower rate. It was unclear whether Councilmember Atkins was confusing the POS for the February 14, 2002 Ballpark issuance with the effort to refinance those same bonds in Summer and Fall 2003.

Mr. Turner asked Councilmember Atkins if she holds investments outside of her City pension. She answered that she participates in a 401(k) plan. Mr. Turner asked her if she reads documents in connection with this investment. Councilmember Atkins explained that she just gives those documents to her financial planner, with whom she meets on an annual basis. Mr. Haegele asked if she would have known whether there were errors in the Ballpark POS. Councilmember Atkins clarified that she just read the document to "gather information" and that she relied on all the outside professionals around her -- outside bond counsel, City Attorney, City Auditor and Comptroller, City Manager -- to identify potential errors. Mr. Romano clarified to Councilmember Atkins the basis for this line of inquiry, namely that, without knowing what she was reading for, it seemed pointless for her to review the document. Councilmember Atkins agreed with this sentiment, reiterating that she was seeking only to learn about the issue. Still, she noted that she viewed the process of reading the document itself as a learning process so she could better understand offering statements in the future.

Mr. Prosser asked Councilmember Atkins whether she ever saw the Bryan Cave letter again in connection with other offerings. Councilmember Atkins could not recall seeing this letter or any other materials that looked like it at later meetings. Mr. Romano asked Councilmember Atkins whether, looking back at the advice to carefully read through the Ballpark POS, it seemed unique or at all strange. Councilmember Atkins conceded that it appeared somewhat out of the ordinary in hindsight.

Mr. Romano showed Councilmember Atkins a July 1, 2004 summary memorandum of her July 1, 2004 interview with V&E (Exhibit 5). Mr. Romano directed Councilmember Atkins's attention to the paragraph on page 6 containing her description of being walked through the 2003 Ballpark Refunding Official Statement by Girard. Mr. Romano asked whether this rendition of her review of the offering statement was accurate. Councilmember Atkins said that her discussions with Girard were not very specific and she could not recall him

personally taking her through the document. She clarified that he really only explained the purpose of the offering -- *i.e.*, an opportunity to refinance the prior year's bonds after all the lawsuits. Mr. Prosser asked Councilmember Atkins whether she understood that this question referred to the 2003 Offering as opposed to the 2002 Offering discussed earlier; she said that she did.

Mr. Romano directed Councilmember Atkins's attention to the same paragraph and asked her about her comments about the political concerns surrounding that Ballpark offering. She could not recall what political concerns she would have been referring to at that time nor could she recall having a conversation with Girard about this topic. Asked whether there were any political concerns surrounding the 2001-2002 Ballpark offering, Councilmember Atkins stated that the concerns involved the numerous pending litigations.

Mr. Romano directed Councilmember Atkins's attention to the paragraph on page 3 which described how her office would review the City Manager's Report in connection to a bond offering that would be coming before Council. Mr. Romano asked Councilmember Atkins whether she recalled receiving these Manager's Reports. She stated that she did, but that her Chief of Staff most likely delegated them to her staff to review. However, Councilmember Atkins explained that she would assign to herself the responsibility of reading the actual POS. Her Chief of Staff would likely have not read the POS because her office only received one copy of it.

Mr. Prosser asked Councilmember Atkins to recount the process of how her office dealt with a POS when it was received. Councilmember Atkins explained that they would receive the docket binders on Wednesdays, including Form 1472s and the Manager's Reports. Between Wednesday and Friday, they would receive more complex documents for certain items. On Thursdays, her staff would take part in the "Management Document Review," where the City Manager's Office made a presentation on a number of items about which the Office believed Council members would have questions. Councilmember Atkins explained that she mandated that her staff attend these briefings, a practice which she continues to this day. On Fridays, her staff would brief her for two hours on the docket items for the following week's Council meeting. Her staff could usually anticipate what she would ask about, but if she inquired as to a feature they had not covered, they would look into the issue and brief her on Monday. What they had not covered during the Friday briefing, Councilmember Atkins would take home to review over the weekend.

### ***Pension Reform Committee***

Mr. Romano asked Councilmember Atkins whether she recalled the February 12, 2003 Rules Committee meeting at which the SDCERS Board made its presentation in response to the BRC Report. Councilmember Atkins was not certain as to when she left the Rules Committee or whether she had seen this presentation. Mr. Romano showed Councilmember Atkins a January 15, 2003 email from Sally Zumalt (SDCERS Board staff member) to the members of the SDCERS Board, with an attached draft of a PowerPoint presentation to be shown at the February 12, 2003 Rules Committee meeting (Exhibit 6). Councilmember Atkins did not recall seeing this presentation at the time, but she believed she may have seen it subsequently during a different interview. Mr. Romano directed her attention to page 9 of the

presentation stating the funded ratio was at 77.3%. Councilmember Atkins could not recall receiving this information at the time.

Mr. Romano asked whether she recalled the pension issue being studied any further. She could not recall the issue coming before Council after this meeting but she did remember the formation of the Pension Reform Committee ("PRC"). She remembered that the PRC was established at Mayor Murphy's direction and that, given the Mayor's practice of creating workgroups to study certain issues, this was not an out of the ordinary response to the problem at the time. Asked whether she recalled any sense at the time that the pension issue had already been studied enough, Councilmember Atkins said she did not. Noting that the City Manager had already put a lot of work into a response to the SDCERS Board presentation at the time the PRC was created, Mr. Romano asked Councilmember Atkins why this response would not have been sufficient. Councilmember Atkins did not know, noting that the Mayor did not consult her on his decision to establish the PRC. Still, she believed that this seemed like a systematic and reasonable approach at the time.

Mr. Romano showed Councilmember Atkins the Pension Reform Committee Report, issued September 15, 2004 (Exhibit 7). Referring to Section III of the Report, entitled "How Did This Happen?", Mr. Romano explained that, as opposed to earlier information that the large pension deficit was primarily due to investment losses, this Report painted a much different picture. Mr. Romano asked Councilmember Atkins if she recalled this distinction coming to light. Councilmember Atkins explained that the cause of the losses continued to be downplayed by City staff members even at this time, but it was clear to Council that they would have to implement some of the recommendations contained in the PRC Report. Mr. Romano asked Councilmember Atkins if she recalled how this Report described a completely different version of how the system's UAAL grew so rapidly. Councilmember Atkins explained that she came to realize that Council members may not have been given all the best information. In hindsight, she believed that it "does seem that we were misled" because even though they were shown negative information from time to time, they were reassured that things would straighten out in the long-term. Asked who some of these people were that reassured Council members, Councilmember Atkins listed Lawrence Grissom (SDCERS Administrator), Frederick Pierce (SDCERS Board President) and Uberuaga.

Mr. Turner asked if there were other people in City government that she believed misled her. Though she did not name anyone in particular, Councilmember Atkins explained that she was told that there were potential solutions to the pension problem -- and that MP2 was articulated to her as such a plan -- and she was often reassured that the status of the City's pension system was similar to many other cities. Overall, she believed, the numbers told one story while the staff told another. Mr. Turner asked whether, as a Council member today, she believed that the City Council was misled. Councilmember Atkins stated that she "would be forced to say probably," particularly as to the City Manager's Office and Financial Management because they did not disclose information to Council that would have demonstrated that the system was in disrepair. Mr. Dahlberg asked Councilmember Atkins whether she believed the City Manager's Office and Financial Management had the best information or whether she relied more on the SDCERS Board and staff. She stated that she believed both were equally important, as the information came from SDCERS and the analysis from the City.

Mr. Romano asked Councilmember Atkins whether she had any concerns about potential conflicts of interest arising out of City staff making recommendations about the Retirement System such that the information may have been tainted. She said she did not have such concerns at the time, but noted that now she has reason to question such analysis, particularly from the City Attorney's Office and the City Auditor and Comptroller's Office. Mr. Romano posited that the Council members needed objective and accurate information from City staff to be able to ask the right questions. Councilmember Atkins agreed with this statement, noting that most Council members did not have sufficient background knowledge to deal with many of the technical issues underlying the pension fund. Reliance on experts in City government was both necessary and inevitable. She believed that the City may be already moving in the right direction by obtaining more reliable expertise in a number of areas and that this is a key area for continued remediation efforts. Mr. Prosser then pointed out a few things that Councilmember Atkins has already discussed with him about potential areas for improvement, including her concerns about documents with blanks in them that are presented to Council and her uncertainty as to whether Form 1472s have actually been certified by various City offices.

### ***Labor Negotiations and MP2***

Mr. Romano provided Councilmember Atkins with a brief background of MP1 and the events leading up to the 2002 labor negotiations. After confirming that Councilmember Atkins recalled generally a closed-session meeting in the spring of 2002 at which the upcoming labor negotiations were discussed, Mr. Romano showed her an April 26, 2002 Closed Session Agenda regarding Meet-and-Confer issues (Exhibit 8). Asked whether City Council would meet regularly to receive updates about the labor negotiations, Councilmember Atkins responded that they did. Pointing to the item on the agenda regarding "Funding Ratio and Impact on City's Contribution Rate," Mr. Romano asked Councilmember Atkins if she knew what this meant. She could not recall understanding this clearly at the time. Mr. Romano asked her whether she recalled discussion of the "trigger" at this meeting. Councilmember Atkins recalled discussion of the trigger generally at a closed-session meeting, but was not certain it was at this particular meeting. She explained that it was not uncommon for an item on a closed-session agenda to get pushed back to future meetings.

Mr. Romano inquired as to Councilmember Atkins's recollection of the initial MP-2 proposal that would have lowered the funding ratio trigger to 75%. Councilmember Atkins recalled that Uberuaga described this proposal as a way for the City to meet its obligations in a manner that was prudent over time, in terms of annual budget and labor obligations. She believed that Uberuaga noted that the City was not close to the current trigger at the time; rather, they were told that it was only a possibility that it could be breached later on. Asked whether she recalled discussion about a "balloon payment," Councilmember Atkins explained that she did but could not remember the amount that was quoted. Councilmember Atkins recalled that Uberuaga explained the background of MP1 and clarified that the City would have to gain the approval of the SDCERS Board to implement any changes to the present system.

Mr. Romano asked Councilmember Atkins whether she recalled the labor negotiations being discussed at the same time as the City's proposal for contribution relief.

Councilmember Atkins could not recall the two issues coming up in conjunction, despite Mr. Romano pointing out that the funding ratio item on the closed session agenda was positioned directly above the list of proposed benefit enhancements. Councilmember Atkins could only recall that, during the discussion of MP2, Uberuaga had explained that the City would have to make sure it could meet all its obligations as it approached the trigger. She could not recall labor issues being tied in with this discussion of MP2 and the budget, as she perceived the two issues as very distinct matters.

Mr. Romano showed Councilmember Atkins a June 14, 2002 memorandum from Cathy Lexin (Human Resources Director) and Elmer Heap (Head Deputy City Attorney) to the Mayor and City Council regarding contingent retirement benefits and the new Manager's Proposal (Exhibit 9). Mr. Romano directed Councilmember Atkins's attention to the first sentence of the memorandum which states: "the City Council approved a number of retirement benefit enhancements with a contingency feature." Councilmember Atkins could not recall the benefits being tied to any other proposal nor could she recall the issue being presented as it is in this memorandum. Councilmember Atkins could not recall the recommendation in the memorandum to increase the ramp-up rate by 0.5% nor any other related contribution discussions. Though she did not know who Heap was, Councilmember Atkins surmised that Lexin and Heap likely had more information from the City Manager's Office about both labor negotiation and contribution relief issues, but she simply could not recall those issues being presented together. She could not recall anyone raising a concern that the two issues should not be discussed together, and she believed that to characterize the two separate issues as contingent would be "wrong."

Mr. Romano showed Councilmember Atkins a June 23, 2002 email from Councilmember Wear to Lexin, the Mayor, Council members, and a number of City officials -- Casey Gwinn (City Attorney); Heap; Leslie Devaney (Deputy City Attorney); Girard; Uberuaga; and Ewell (Exhibit 10). The email stated, in relevant part, that Lexin should be prepared to respond to the Council why the City granted new benefits to the unions without first ensuring it received contribution relief from SDCERS. Mr. Romano asked Councilmember Atkins about what she perceived Councilmember Wear's complaint to be in this email. She did not recall reading this email at the time, but has subsequently seen it at other interviews. She explained that she interprets it now as questioning why Lexin had agreed to the new benefits if the Council members did not all agree to the deal. Mr. Romano explained his own understanding of the implication of Councilmember Wear's frustration with Lexin for not receiving assurance from the SDCERS Board as to contribution relief. Mr. Romano asked Councilmember Atkins what she believed Councilmember Wear's reference to "policy path" meant. Councilmember Atkins understood "policy path" as referring to the implementation of MP2, though she would not speculate about what "in advance" meant in the context of the email. Seeking clarification, Mr. Romano inquired whether she recalled a sense that people were discussing issues that were not related. Councilmember Atkins reiterated that she believed that the issues were unconnected and, if other Council members had the sense that the issues were connected, she was unaware of it at the time.

Mr. Romano showed Councilmember Atkins a July 8, 2002 memorandum from Lexin and Heap to the Mayor and City Council regarding contingent retirement benefits and the modification of the pending Manager's Proposal (Exhibit 11). Mr. Romano directed

Councilmember Atkins's attention to the language on page 2 regarding Lexin and Heap being "optimistic" about a favorable report from the SDCERS Administrator (with regard to the modified proposal) and their anticipation of a SDCERS Board member making a motion to approve the modified proposal. Mr. Romano asked Councilmember Atkins if she knew which Board member this memorandum was referring to; she said that she did not know at the time. Asked whether she recalled seeing this memorandum, she stated that she did not and that very often Council was provided Meet-and-Confer materials the day of closed-session meetings. She did recall that Lexin and Terri Webster (Assistant City Auditor and Comptroller) were on the SDCERS Board. Mr. Romano asked whether it struck her as inappropriate that Lexin was discussing internal board matters openly with members of City Council and, in particular, whether there were any questions as to which "hat" she was wearing. Councilmember Atkins could not recall this sentiment at the time but likely came to this conclusion later on.

Mr. Romano inquired as to Councilmember Atkins's general understanding of MP2. Councilmember Atkins first posited that it lowered the funding floor to 75%. Mr. Romano explained that that aspect was part of the original MP2 proposal but was ultimately rejected by the SDCERS Board. Councilmember Atkins explained that she also understood that MP2 implemented a longer period of time to reach full funding of the pension fund.

### *Shipione Allegations*

Mr. Romano asked Councilmember Atkins whether she came to learn of Diann Shipione's concerns about MP2 while the proposal was being debated. Councilmember Atkins recalled that she knew who she was and also knew her husband, Pat Shea, on a social level. Mr. Romano showed Councilmember Atkins a November 18, 2002 letter from Shipione to the Mayor and City Council (Exhibit 12). Councilmember Atkins recalled seeing this letter at a Council meeting. She did not recognize whose handwriting was on the document. Asked whether she recalled Shipione making a presentation at the November 18, 2002 meeting, Councilmember Atkins remembered Shipione testifying at a Council meeting though she was not certain as to which one. Mr. Romano inquired as to Councilmember Atkins's recollection of Shipione's allegations. Councilmember Atkins recalled that Shipione was concerned about the direction MP2 would take the Retirement System and urged City Council not to approve the measure. Some Council members asked the City Manager to respond to Shipione's concerns.

Mr. Romano asked Councilmember Atkins whether she regarded Shipione as having credibility at the time. Councilmember Atkins understood that Shipione was rather isolated in her concerns. Nonetheless, Councilmember Atkins believed that because Shipione was on the SDCERS Board, it was important to listen and respond to her concerns. Mr. Romano asked Councilmember Atkins whether she was aware of City staff members' opinion of Shipione's credibility. Councilmember Atkins perceived that there were some who discounted Shipione's concerns, listing Mayor Murphy and Councilmember Jim Madaffer as two people who possibly believed that Shipione had "other axes to grind." Asked what those "other axes" could have been, Councilmember Atkins posited the Mayor's opposition to Shipione's husband's commitment to a Brownfields project. Overall, Councilmember Atkins explained that because of all of the information the City Council received from City staff that seemed to demonstrate long-term solutions to the pension deficit, she believed that many members of Council did not feel that Shipione's concerns went unanswered.

Mr. Romano inquired whether Shipione's concerns were addressed before the approval of MP2. Councilmember Atkins explained that there was sufficient "forward momentum" provided by the support of City staff such that City Council believed it was reasonable to approve the proposal and then ask for a response. Mr. Romano asked Councilmember Atkins what could be done in terms of invalidating MP2 if it later turned out that Shipione's allegations were on point. Councilmember Atkins explained that they could undo an action by way of Council procedure. However, Councilmember Atkins noted that "even the Retirement Board" seemed to approve of the proposal at that time, which provided Council more assurance that it was prudent to move forward.

Mr. Romano asked Councilmember Atkins whether she recalled ever receiving advice from an outside attorney about the legality of MP2. She could not recall receiving any legal advice outside of the City Attorney's Office and, in particular, Girard. Asked whether Girard was involved with this proposal (and, thus, whether his advice was appropriate), Councilmember Atkins noted that he was the main line of communication with the SDCERS Board. She could not recall anyone ever giving her advice not to approve MP2, noting that she would have recalled receiving such advice because "everyone seemed to be on the same page here, except for Diann Shipione."

Mr. Turner directed Councilmember Atkins's attention to the language on page 3 of Shipione's letter which states that the SDCERS Board actuary had opposed MP2. Mr. Turner also referred to page 1 of the letter, which states that there were two dissenting votes on the SDCERS Board to MP2 (Shipione and Tom Rhodes). Mr. Turner inquired as to Councilmember Atkins's opinion of these dissenting opinions. Councilmember Atkins explained that she believed at the time that the SDCERS Board actuary -- as well as the SDCERS Board outside counsel -- had signed off on the proposal. She further explained that Rhodes did not go to Council to speak out about his concerns. Thus, the only voice in opposition belonged to Shipione, and her concerns seemed to have been addressed by City staff. Asked whether she viewed Shipione in a negative light as a dissenter, Councilmember Atkins stated that she did not and respected her opinion as a SDCERS Board member. She tried to weigh her opinion as objectively as possible.

Mr. Romano inquired about Councilmember Atkins's understanding of the indemnification resolution that accompanied MP2 and that was approved at the November 18, 2002 meeting. She recalled hearing about this provision during closed session and recalled that Girard suggested that Council approve it. Mr. Romano explained that this proposal suggested to him that the SDCERS Board was concerned about being sued for granting the City contribution relief. Councilmember Atkins noted that while there were some questions as to why they should indemnify the Board, Girard assured Council that this was not an unusual request. Asked whether any Councilmember suggested that the SDCERS Board was already indemnified for such decisions in the ordinary course, Councilmember Atkins could not recall but stated that there were several Council members that were surprised by the request, including those people that were concerned about Shipione's allegations. Mr. Romano asked Councilmember Atkins to clarify whether Council members or staff knew about Shipione's concerns before her letter (which dated November 18, 2002, the same day as the meeting). Councilmember Atkins could not really recall the timeline. Without showing Councilmember Atkins the document, Mr. Romano asked whether Michael Aguirre's letter -- dated June 20, 2002, copied to

Councilmember Atkins among other Council recipients, and threatening to sue the SDCERS Board if MP2 was approved -- raised concerns about MP2 at the time. Councilmember Atkins recalled Aguirre's concerns, but only vaguely. (Aguirre worked in private practice at the time.)

Mr. Romano showed Councilmember Atkins a December 6, 2002 memorandum from Ewell to the Mayor and City Council responding to Shipione's allegations (Exhibit 13). Councilmember Atkins recalled receiving this letter and, at the time, believed that this response was adequate. She did not know why Ewell had written this memorandum instead of Uberuaga.

Mr. Romano showed Councilmember Atkins a December 31, 2002 letter from Shipione to Ewell copied to the Mayor and City Council among other recipients (Exhibit 14). Mr. Romano inquired whether Councilmember Atkins recalled receiving this response letter. Councilmember Atkins explained that she did not remember reading this at the time, but has since become familiar with the letter. Mr. Romano asked whether, at the end of 2002, she recalled the sentiment that Shipione was an eccentric. Although she did not necessarily agree, Councilmember Atkins explained that there were people on City Council and in City government who thought that Shipione would not let things go even after her concerns had been addressed. Mr. Haegele asked Councilmember Atkins who would have believed that to be the case. Councilmember Atkins backed off her previous statement, declining to name any individuals or acknowledge that anyone had made derogatory comments about Shipione. Mr. Haegele asked who would have spoken in a "dismissive tone" about Shipione. Councilmember Atkins explained that it was less direct and more "static" behind the scenes. Still, Councilmember Atkins noted that Councilmember Madaffer may have made dismissive comments, as "he can be quite verbal." Also, she posited that "quite possibly [Councilmember Scott] Peters," though he would not have said anything derogatory. She also mentioned that Girard was dismissive of Shipione. Mr. Haegele asked Councilmember Atkins whether it would surprise her if we were to show her a number of emails expressing a dismissive tone toward Shipione and her allegations. Councilmember Atkins stated that it would if they contained derogatory remarks. Asked who gave credence to Shipione's concerns, Councilmember Atkins answered that Councilmember Donna Frye supported her.

Mr. Romano asked Councilmember Atkins if she sensed an underlying dismissive attitude toward Shipione from the SDCERS Board. Councilmember Atkins stated that, while she did not have much interaction with the Board, she got the feeling that Board President Frederick Pierce was rather dismissive of Shipione. She recalled that she never heard Lexin or Webster say anything derogatory about Shipione. She had met with Ron Saathoff on other issues, but could not recall him saying anything about Shipione. She did not know Vortmann or Rhodes very well and could not recall conversations with them on this subject.

Mr. Haegele explained that, after reading Shipione's letters, he could not understand how such comprehensive and informative documents could simply be dismissed, particularly considering the import of the subject matter and her position as a SDCERS Board member. Mr. Haegele inquired as to how the importance of these letters could have been minimized. Councilmember Atkins did not know, but said it was not uncommon for a member of a committee to raise concerns against the grain of the other members and not be given due consideration. As an example, she explained that April Boling had been a member of a number of committees and her concerns about some of the actions of the committees were not always

addressed fully. After Mr. Haegle suggested that even a listener's "roll of the eye" can limit a speaker's effective opposition to a particular policy, Councilmember Atkins acknowledged she knew what Mr. Haegle was referring to, in particular Lexin's act of rolling her eyes at a Council meeting at which Shipione spoke. Councilmember Atkins pointed out that she only became aware of Lexin's action when she was later shown video of the meeting.

### *Presidential Leave*

Mr. Romano asked Councilmember Atkins about her understanding of the Presidential Leave benefit. Councilmember Atkins explained that during Meet-and-Confer in 2002, she learned that this benefit had been requested by Saathoff (President of Local Union 145, the Firefighters Union) after he had learned that several other union heads already received it. She understood the benefit to deal with the formula by which union presidents' pension benefits were determined. Mr. Romano clarified whether she understood that union presidents would be able to use their union salary as part of the calculation of their pension, to which she assented. Asked whether she recalled Saathoff ever receiving this benefit retroactive to 2001, Councilmember Atkins answered that she did not. Mr. Romano asked Councilmember Atkins whether she recalled the approval of this benefit around the same time as MP2 was approved. She recalled that the benefit was addressed as part of Meet-and-Confer but that she did not recall it being specifically related to MP2. She did not have knowledge of Saathoff using accrued leave time to purchase service credits around that time period.

Mr. Romano asked whether there were any concerns about the appearance of granting Saathoff the Presidential Leave benefit given his position on the SDCERS Board. Councilmember Atkins did not think his SDCERS duties and his receipt of the benefit as the president of a union were related, as the benefit was part of the "whole package." Further, Local Union 145 was known as one of the most "savvy" bargaining units and it was viewed as peculiar that it had not been able to attain this benefit at an earlier time.

### *Purchase of Service Credit Program*

Mr. Romano asked Councilmember Atkins whether she recalled the modification of the Purchase of Service Credit program ("PSC") to allow purchased years to count toward an employee's ten-year vesting period. Councilmember Atkins did not recall this change as a new benefit in 2002. Mr. Romano asked Councilmember Atkins whether she had ever purchased "air time." Councilmember Atkins answered that she had purchased almost five years. She believed that she did so in 2003, when she had been with the City for almost ten years. Mr. Romano inquired about how the process worked based on her own experience. Before she took advantage of the program, she recalled receiving "notice" that the price for purchasing service credits would be raised and that employees would have an opportunity to purchase "air time" before "it ended." Asked why she believed the prices were going to be raised at that time, Councilmember Atkins posited that the SDCERS Board and actuary calculated that "the prices needed to go up."

Mr. Romano asked Councilmember Atkins why she believed that they had recalculated the prices. Councilmember Atkins stated that she did not know and that she believed that the prices needed to be recalculated "every so often." Asked whether she was aware that the credits were under-priced, Councilmember Atkins stated that she was not and just thought it was logical and in due course that the system would adjust the prices. Mr. Turner

sought clarification, asking Councilmember Atkins whether she believed at the time she bought the service credits that she was paying fair value. Councilmember Atkins responded that nothing indicated to her that they were adjusting the formula because it was under-priced. She believed the change was "formula driven" and just a "routine review." Asked what "formula driven" meant, Councilmember Atkins responded that she was not certain how they calculated the formula. Asked about her current understanding of the change in 2003, Councilmember Atkins explained, "there's a real cost to this and the cumulative effect to that is actually significant, and we didn't get information of that nature at the time." She acknowledged that she has since learned that the credits were under-priced.

### ***Legislative Officers' Retirement Plan***

Mr. Romano asked Councilmember Atkins about her understanding of how the Legislative Officers' Retirement Plan ("LORP") operated. Councilmember Atkins explained that, because term limits made it impossible for elected officials to serve for ten years, legislators' pensions could vest earlier. She also explained that the multiplier used for legislators is larger than that used for employees who were part of the general membership of the Retirement System. Mr. Romano asked Councilmember Atkins if she was aware of the restriction in the City Charter that mandates an employee work for ten years before his pension can vest. Councilmember Atkins acknowledged that she was. Asked whether anyone has ever brought up this potential Charter conflict, Councilmember Atkins could not recall hearing such a concern.

Mr. Romano asked Councilmember Atkins whether she recalled Proposition C, which sought to amend the Charter to allow for a five-year vesting period and which was rejected by voters in January 2002. She did recall this measure and how it failed, noting that it was put on the ballot at the request of the labor unions *and* management. Mr. Romano asked whether, considering its rejection, anyone discussed whether there may be a potential conflict between LORP and the Charter. Councilmember Atkins could not recall such a discussion or this concern being brought to the City Council.

### ***Wastewater***

Mr. Schachter showed Councilmember Atkins a January 29, 2002 Closed-Session Report for a Council meeting held that day (Exhibit 15). Mr. Schachter asked Councilmember Atkins whether she recalled a presentation by Dennis Kahlie (City Utilities Finance Administrator) at this meeting. Councilmember Atkins recalled that Kahlie did appear at a closed-session meeting to discuss this general issue, along with Ted Bromfield (Deputy City Attorney), but that she could not recall the specific presentation at this meeting. Mr. Schachter asked Councilmember Atkins what she recalled about Kahlie's discussion in closed session. She responded that he had informed Council of the need to consider rate increases, noting that she believed that this discussion related to capital improvements.

Mr. Schachter showed Councilmember Atkins a November 14, 2002 memorandum from Mary Vattimo (City Treasurer) and Kelly Salt (Deputy City Attorney) to the Mayor and City Council (Exhibit 16). Reviewing the memorandum, Councilmember Atkins explained that she vaguely recalled some issues regarding the Metropolitan Wastewater Department ("MWWD") being discussed but did not remember this specific memorandum.

Referring to Councilmember Atkins's earlier statement about Kahlie's presentation pertaining to rate increases, Mr. Schachter explained that the January 29, 2002 meeting and the November 14, 2002 memorandum both concerned reallocating the cost structure of sewer rates as opposed to pure rate increases. Mr. Schachter inquired whether Councilmember Atkins recalled a separate discussion about this allocation modification issue. Councilmember Atkins recalled that Council was made aware of the need for a Cost of Service ("COS") study and that there was a time frame in which it needed to move forward. However, Councilmember Atkins stated that many of the discussions and meetings surrounding this issue are confused in her mind, particularly as to what was discussed in closed-session versus open-session meetings.

Mr. Schachter asked Councilmember Atkins whether she recalled discussion of the reallocation issue in terms of the cost for residential users going down while the costs for certain companies would increase. Councilmember Atkins did not recall this issue being raised in closed session, but she did recall that representatives from business did attend several open-session meetings to present their side of the arguments about the rate issue. She recalled meeting with some of these representatives in her office, in particular those from the restaurant industry and possibly Kelco.

Directing Councilmember Atkins's attention to the November 14, 2002 memorandum, Mr. Schachter inquired whether she recalled a meeting involving the issues discussed therein. Councilmember Atkins could not recall a specific presentation on the issue, but she remembered Councilmember Frye pushing Kahlie and other City staff about the timeline for which a COS study would be completed. Asked about her understanding of the purpose of a COS study, Councilmember Atkins explained that it addressed the need to consider the possibility of increasing sewer rates and, in particular, whether they should be considering the "solids aspect" in formulating a rate structure. She believed that these studies were particularly important in terms of considering the need to raise more revenue from the sewer rates to deal with spills and capital improvements.

Councilmember Atkins understood from the memorandum that the COS study needed to be done and that the City would not be negatively impacted by the COS study in terms of information being used in pending litigations. However, she was uncertain as to the relationship of the COS study to the allocation issue discussed in the memo. Mr. Schachter clarified what the memorandum states, in particular that the City's rate structure is out of compliance with federal and state requirements and the consequences of the non-compliance could be the loss of \$370 million in grants and loans. Councilmember Atkins could not recall this specific issue being discussed; rather, she could only recall discussion of the need to move forward with the COS study. Mr. Schachter again asked Councilmember Atkins about the purpose of this COS study, but she stated that she could not recall compliance being a reason they needed to conduct a COS study.

Mr. Schachter directed Councilmember Atkins attention back to the January 29, 2002 Closed-Session Report (Exhibit 15). Pointing to the "Comments" section of the Report, Mr. Schachter asked Councilmember Atkins what "note and file" meant. Noting that Council members do not usually see these docket sheets after a meeting, Councilmember Atkins believed that it meant "no further action to be taken." Councilmember Atkins pointed out that, in this particular case, the "note and file" comment is followed by the notation, "City Attorney to

analyze." Councilmember Atkins did understand at one point that the City Attorney was awaiting a report from the City Manager about this general issue. Mr. Schachter asked how a particular item is note-and-filed. Councilmember Atkins explained that this is not a term they would use in Council and there is not a process by which they receive a report saying that Council has note-and-filed something. As a general matter, this term merely indicates to her that, at a meeting, the Council members decided not to pursue an issue further.

Mr. Schachter asked about what types of issues come up in closed-session meetings. Councilmember Atkins explained that potential litigations, matters of national security and personnel matters were frequent topics of discussion. Noting that the January 29, 2002 docket sheet contained a check-mark next to "Litigation," Mr. Schachter asked Councilmember Atkins what about this particular issue made it appropriate for closed session. She could not specifically recall why this issue would have been filed under "Litigation." Mr. Schachter inquired whether, in hindsight, she was aware of the kind of exposure the City faced on this issue. Councilmember Atkins stated that she would not have known at the time.

Mr. Schachter asked Councilmember Atkins whether she could recall the general response from Council members or the Mayor about the proposition of changing the rate allocation structure. Councilmember Atkins explained that the Mayor seemed reluctant about the issuance of a COS study. She noted that Councilmember Frye pushed for the COS study to be completed. She believed Councilmember Peters was perceived to be a leader on Council in terms of these issues. As for the Mayor, Councilmember Atkins believed that he did not want to hear this issue in open-session because of other litigations pending on related issues. Mr. Schachter asked whether the Mayor was concerned about the impact of such a change on business interests. Councilmember Atkins reiterated that she recalled these concerns being addressed in open session. Asked whether she recalled discussion of the business interest issue in advance of June 2004 by Council members, she recalled such discussion coming from lobbyists, but not from Council members.

Mr. Schachter showed Councilmember Atkins a November 14, 2002 memorandum from the City Attorney to Charles Abdelnour (City Clerk) regarding the closed session agenda for a November 19, 2002 Council meeting (Exhibit 17). Mr. Schachter asked Councilmember Atkins if she recalled the reallocation issue -- as discussed in the November 14, 2002 Salt and Vattimo memorandum -- being removed from the agenda for this closed-session meeting. She could not recall the item being removed. Mr. Schachter asked whether she received the closed-session agenda directly. Councilmember Atkins explained that she did receive it directly in a confidential envelope, usually the Friday before the meeting. Asked whether it was usual or unusual for an item to be removed, Councilmember Atkins explained that it is common for Council not to get to an item because of time constraints. They are usually notified of removal of an item during the closed-session meeting. Asked whether she recalled this particular item being removed at this closed-session meeting, Councilmember Atkins responded that she could not.

Mr. Schachter asked Councilmember Atkins whether she read through all the closed-session materials or rather just focused on specific issues. Councilmember Atkins explained that she reads through all the materials "as a practice" because Council members potentially have to vote on all of the items. She generally takes the materials home over the

weekend and reads them before the meeting on Tuesday mornings. Mr. Schachter asked Councilmember Atkins whether, assuming she read through the November 14, 2002 Salt and Vattimo memorandum and learned about the major consequences of non-compliance and then found out later that this particular issue had been removed from the closed-session agenda, the removal of the issue would have been significant to her. Councilmember Atkins explained that it would not have been a concern if the City Attorney or City Manager informed them that the issue needed to be studied further or if it was removed because of time constraints. She explained that the only reason it would have been a significant concern was if it was a particularly time sensitive issue; otherwise, she would have just assumed it would be re-docketed at a later time.

Mr. Schachter inquired about the May 2002 open-session meeting at which Councilmember Frye inquired about the release of a Black & Veatch COS study. Councilmember Atkins could not recall Councilmember Frye's inquiry. Mr. Schachter asked whether, for a COS study to be issued, Council needed to vote to authorize such a study. Councilmember Atkins explained that if a consultant study costs more than \$250,000, Council must authorize the expenditure. However, up to that amount, the City Manager can hire consultants without Council approval.

Mr. Schachter showed Councilmember Atkins a November 22, 2002 memorandum from Ewell to the Mayor and City Council with an attached draft of the May 2002 Black & Veatch COS study (Exhibit 18). Councilmember Atkins vaguely recalled seeing this COS study. Mr. Schachter directed her attention to language in the second paragraph of the document which states: "As a recipient of various federal grants and state loans, the City is obligated to comply with SWRCB's Revenue Program Guidelines." Councilmember Atkins did not recall reading this specific language. Mr. Schachter inquired as to whether she understood at that time that there had been several previous COS studies issued that stated a similar conclusion. Councilmember Atkins stated that she was not aware of this at the time, nor was she aware that the City had been out of compliance for at least five years at that point in time. Mr. Schachter asked if she was aware that the release of this particular COS study was partially precipitated by Councilmember Frye's demands. Councilmember Atkins generally recalled Councilmember Frye pushing for the release of these studies on more than one occasion. Asked what occurred after the release of this COS study to Council, Councilmember Atkins stated that the City Manager believed that the City Attorney still had to review the rate allocation issue. She believed that she received this information from Ewell.

Mr. Schachter showed Councilmember Atkins a June 20, 2003 draft of a POS for a sewer bond offering (Exhibit 19). Councilmember Atkins could not recall seeing this particular POS, asking Mr. Schachter whether it was docketed. Mr. Schachter responded by asking Councilmember Atkins how it is determined what is docketed. She did not really have an answer to this question, explaining that Council members would receive materials for every item that was docketed. She would usually take POS's home with her to read, as they were very complex documents. Asked whether anyone on her staff would review them, she answered that she would mostly undertake the review process herself unless it involved a particular subject matter about which a staff member had some expertise. Mr. Schachter directed Councilmember Atkins's attention to the language on page 31 of the POS that states: "The City's rate structure has been reviewed by the State Board and no grant funds or costs under grant funded programs

have been disallowed based on the nature of the rate structure.” Councilmember Atkins could not recall reading this language, discussing it with anyone or it being an issue before Council.

### *Remediation*

Mr. Romano briefly explained some of the recommendations contained in a draft ordinance in V&E’s first investigative report, most of which had been adopted by the City into its Municipal Code. Mr. Romano inquired as to Councilmember Atkins’s opinion about the effectiveness of these measures. Councilmember Atkins believed that the Disclosure Practices Working Group was a good idea, noting however that the group is “of course chaired by the City Attorney.” Nonetheless, she viewed the fact that Aguirre had brought in a Deputy Attorney with a finance background as an improvement. Mr. Romano asked whether City Council plays a role in choosing the City Attorney’s Office representative to City Council. Councilmember Atkins explained that this process has been left to the City Attorney, noting that she believed that, at the very least, the Mayor should have a hand in this decision.

Councilmember Atkins said that the City will need to establish a more formal audit committee to work directly with City Council and issue reports about various issues on a periodic basis. Councilmember Atkins noted that the creation of an Independent Budget Analyst Office has been helpful so far, though she believed that an attorney needs to be put in that office. Asked whether that office has a specific budget, she stated that she did not believe so.

As for the City Auditor and Comptroller’s Office, Councilmember Atkins noted that several Council members want to make this office an independent body rather than under the wing of the Mayor’s Office. This is an ongoing discussion. Mr. Romano asked whether there has been any discussion of term limits for the City Auditor. Councilmember Atkins responded that she did not recall any such discussion. However, she believed that there is an awareness that they need to ensure some level of independence in the office while at the same time “making sure [the Office] does not get too comfortable.” She stated that the new Auditor recently hired by the City “has not been in lock-step” so far but did not specify any problems.

Mr. Romano directed Councilmember Atkins’s attention to page 5 of Exhibit 5, her July 1, 2004 interview with V&E, where she apparently stated that there needed to be a naysayer on issues that came in front of Council such that Council members heard both sides of all issues. Mr. Romano asked Councilmember Atkins how Council members ensure that they receive both sides of a particular issue, particularly when they are receiving presentations from the City Manager. Councilmember Atkins discussed Meet-and-Confer negotiations in 2005, noting that Council had hired an independent expert as to employment law issues to offer guidance. She explained that this expert had provided “absolute differing opinions” from the City Attorney’s Office which helped inform Council members’ understanding of the issues. She believed that this independent analyst served a much more useful role than the City Manager had played in the process and helped the City Manager “hold the line on benefits” where such an approach made sense. She explained that, in the past, having so many of the City’s main operative offices in close contact with the City Attorney’s Office was the root of the problem, as objectivity was sacrificed.